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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/631,272	07/31/2003	Marc Charles Payne	881022-7	3765

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BRIAN M BERLINER, ESQ
O'MELVENY & MYERS, LLP
400 SOUTH HOPE STREET
LOS ANGELES, CA 90071-2899

EXAMINER	
SZUMNY, JONATHON A	

ART UNIT	PAPER NUMBER
3632	

DATE MAILED: 11/01/2004

Please find below and/or attached an Office communication concerning this application or proceeding.

Office Action Summary	Application No.	Applicant(s)	
	10/631,272	PAYNE ET AL.	
	Examiner	Art Unit	
	Jon A Szumny	3632	

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE *3* MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

1)☒ Responsive to communication(s) filed on *18 October 2004*.

2a)☒ This action is **FINAL**. 2b)☐ This action is non-final.

3)☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

4)☒ Claim(s) ~~1-13~~ 1-9 is/are pending in the application.

4a) Of the above claim(s) *2,3,5-8 ~~and 10-13~~* is/are withdrawn from consideration.

5)☐ Claim(s) _____ is/are allowed.

6)☒ Claim(s) *1,4 and 9* is/are rejected.

7)☐ Claim(s) _____ is/are objected to.

8)☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

9)☐ The specification is objected to by the Examiner.

10)☐ The drawing(s) filed on _____ is/are: a)☐ accepted or b)☐ objected to by the Examiner.

Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).

Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).

11)☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

12)☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).

a)☐ All b)☐ Some * c)☐ None of:

1.☐ Certified copies of the priority documents have been received.

2.☐ Certified copies of the priority documents have been received in Application No. _____.

3.☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

1) ☐ Notice of References Cited (PTO-892)
2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
3) ☐ Information Disclosure Statement(s) (PTO-1449 or PTO/SB/08) Paper No(s)/Mail Date _____.
4) ☐ Interview Summary (PTO-413) Paper No(s)/Mail Date. _____.
5) ☐ Notice of Informal Patent Application (PTO-152)
6) ☐ Other: _____.

This is the second office action for application number 10/631,272, Method and System for Temporary Attachment of a Container to a Vehicle, filed on July 31, 2003.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

Election/Restrictions

10/27/04 Claims 2, 3, 5-8 ~~and 10-13~~ withdrawn from further consideration pursuant to 37 CFR 1.142(b) as being drawn to a nonelected species or invention, there being no allowable generic or linking claim.

Claim Rejections - 35 USC § 103

Claims 1 and 9 are rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 3,524,614 to Sorth in view of U.S. Patent number 6,305,656 to Wemyss.

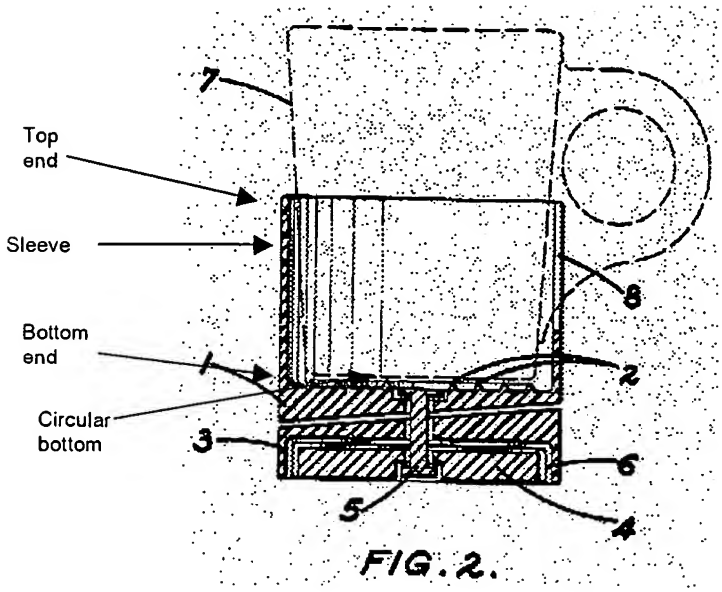

FIG. 2.

Sorth '614 discloses an attachment device (above) comprising a holder (1), a magnet (4) that is connected to the holder (via 5) wherein the magnet is of sufficient strength. However, Sorth '614 fails to specifically teach a cushion to be connected to the magnet wherein at least a portion of the cushion is inherently adapted to be positioned between the magnet and an exterior surface. Nevertheless, Wemyss '656 divulges an attachment device (figure 2) including a magnet with a rubber cushion/boot (22 and 24, column 6, lines 3-14) that is comprised of material (rubber) that would substantially inherently resist scratching of the exterior surface of a vehicle. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the magnet of Sorth '614 so as to have a rubber cushion/boot that could inherently be positioned between the magnet and an exterior surface so as to prevent a object being coupled with the magnet from being marred, in addition to

providing for increased friction which would inherently provide for a superior coupling of the magnet and an exterior surface.

Claim 4 is rejected under 35 U.S.C. 103(a) as being unpatentable over U.S. Patent number 3,524,614 to Sorth in view of U.S. Patent number 6,305,656 to Wemyss, and further in view of U.S. Patent number 4,844,400 to Jasmagy, Jr.

Sorth '614 in view of Wemyss '656 disclose the previously described invention wherein the holder is a cup with a sleeve connected to a circular bottom (above), wherein the sleeve has top and bottom ends, but fail to specifically teach the sleeve to be a conical sleeve with a top end having a greater diameter than a bottom end. Nevertheless, Jasmagy, Jr. '400 divulges an attachment device (figures 1-3) including a conical sleeve (12) having a top end with a diameter greater than that of a bottom end. It would have been obvious to one of ordinary skill in the art at the time the invention was made to have modified the sleeve of Sorth '614 in view of Wemyss '656 to be a conical sleeve with a top end with a diameter greater than that of a bottom end so as to allow for a greater number of various sized containers to be held in the holder of the attachment device.

Response to Arguments

Applicant's arguments filed October 18, 2004 have been fully considered but they are not persuasive.

On the bottom of page 5 of the remarks, the applicant contends that no portion of the boot of Wemyss is positioned between the magnet and the surface of a vehicle.

While this may or may not be true depending upon the exact meaning of the word "between", nevertheless, the Examiner's rejection is based upon Sorth in view of Wemyss, not Wemyss alone. Wemyss teaches a magnet (18) with a cushion (22,24) that protects an object/item being magnetically coupled with the magnet (in Wemyss the object/item is in one instance a cup holder) from being marred. In the case of Sorth, the magnet is being magnetically coupled with a metal part of a vehicle. Therefore, based upon the teaching of Wemyss (placing a cushion between a magnet and a surface/item/object being magnetically coupled with the magnet), the cushion would clearly be able to assume a position that is between the magnet and an exterior surface of a vehicle.

In response to applicant's argument that there is no suggestion to combine the references, the examiner recognizes that obviousness can only be established by combining or modifying the teachings of the prior art to produce the claimed invention where there is some teaching, suggestion, or motivation to do so found either in the references themselves or in the knowledge generally available to one of ordinary skill in the art. See *In re Fine*, 837 F.2d 1071, 5 USPQ2d 1596 (Fed. Cir. 1988)and *In re Jones*, 958 F.2d 347, 21 USPQ2d 1941 (Fed. Cir. 1992). In this case, as previously described, Wemyss clearly teaches placing a cushion between a magnet and a surface being magnetically coupled with the magnet so as to provide for a non-skid surface and so as to inherently prevent marring of the object/item/surface. Clearly, this would be an advantageous modification to the invention of Sorth. The Examiner is clearly not gleaning use of the adhesive layer of Wemyss.

Conclusion

THIS ACTION IS MADE FINAL. Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

Any inquiry concerning this communication or earlier communications from the examiner should be directed to Jon A Szumny whose telephone number is (703) 306-3403. The examiner can normally be reached on Monday-Friday 8-4.

The fax phone number for the organization where this application and proceeding are assigned is (703) 872-9306.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the receptionist whose telephone number is (703) 308-1113.

Jon Szumny
Patent Examiner
Technology Center 3600
Art Unit 3632
October 26, 2004

ANITA KING
PRIMARY EXAMINER